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14 San Francisco

15 UNITED STATES BANKRUPTCY COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 In re

18 THE ROMAN CATHOLIC ARCHBISHOP
OF SAN FRANCISCO,

19 Debtor and
20 Debtor in Possession.

Case No. 23-30564

Chapter 11

**DEBTOR'S (1) SUPPLEMENTAL REPLY
IN FURTHER RESPONSE TO THE
OBJECTION OF THE UNITED STATES
TRUSTEE TO FINAL APPROVAL OF
DEBTOR'S MOTION FOR CONTINUED
USE OF EXISTING CASH MANAGEMENT
SYSTEM OPERATIONAL BANK
ACCOUNTS AND RELATED
INVESTMENT ACCOUNTS; AND
(2) STATUS REPORT REGARDING
COMPLIANCE WITH INTERIM ORDER
REGARDING SAME**

*Filed Concurrently with Third Supplemental
Declaration of Joseph J. Passarello*

27 Date: October 26, 2023
Time: 1:30 p.m.
Place: Via ZoomGov
28 Judge: Hon. Dennis Montali

1 The Roman Catholic Archbishop of San Francisco (“RCASF” or the “Debtor”), the debtor
2 and debtor in possession in the above-captioned chapter 11 case (the “Bankruptcy Case”), submits
3 this supplemental reply (the “Supplemental Reply”) in support of the *Debtor’s Emergency Motion*
4 *for Interim and Final Orders (1) Authorizing Continued Use of Existing Cash Management System,*
5 *Operational Bank Accounts and Related Investment Accounts; (2) Authorizing Maintenance of*
6 *Existing Business Forms, (3) Excusing Compliance With Section 345(b); (4) Authorizing Continued*
7 *Use of Current Investment Policy; and (5) Scheduling a Final Hearing* (the “Motion”)¹ and in
8 response to the *Objection of the United States Trustee to Final Approval of Debtor’s Motion for*
9 *Continued Use of Existing Cash Management System [ECF No. 9] [ECF No. 71]* (the “UST
10 Objection”). This Supplemental Reply also includes a status report regarding the Debtor’s
11 compliance with that certain *Interim Order (1) Authorizing Continued Use of Existing Cash*
12 *Management System, Operational Bank Accounts and Related Investment Accounts; (2) Authorizing*
13 *Maintenance of Existing Business Forms, (3) Excusing Compliance With Section 345(b); (4)*
14 *Authorizing Continued Use of Current Investment Policy; and Scheduling a Final Hearing*, entered
15 on August 25, 2023, as ECF No. 41 (the “Interim Order”). In support of this Supplemental Reply,
16 the Debtor relies upon the *Third Supplemental Declaration of Joseph J. Passarello in Support of*
17 *Debtor’s (1) Supplemental Reply in Further Response to the Objection of the United States Trustee*
18 *to Final Approval of Debtor’s Motion for Continued Use of Existing Cash Management System*
19 *Operational Bank Accounts and Related Investment Accounts; and (2) Status Report Regarding*
20 *Compliance with Interim Order Regarding Same* (the “Third Supplemental Passarello Decl.”) filed
21 concurrently herewith. In further support of the Motion and this Supplemental Reply, the Debtor
22 respectfully represents as follows:

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26 ¹ All capitalized terms used but not defined herein shall have the meaning ascribed to such terms
27 in the Motion, the supplement to the Motion filed on August 23, 2023, as ECF No. 22 (the
28 “Supplement”), the Debtor’s reply to the UST Objection filed on September 12, 2023, as ECF No.
87 (the “Reply”), and the supporting declarations filed in support of the Motion, Supplement, and
Reply, as well as the Background Passarello Decl., as applicable.

1 I.

2 **PRELIMINARY STATEMENT**

3 Just cause exists to waive the requirements of section 345(b)² in this Bankruptcy Case with
4 respect to the two primary investment types at issue.

5 The Debtor's investments in the BlackRock FedFund (defined and described below) are safe
6 (so long as our federal government is not overthrown) and generate an extra \$36,000 per month over
7 what would otherwise be generated via strict compliance with section 345(b) and the UST
8 Guidelines.

9 Separately, the Debtor's investments in various diversified funds (real estate, private equity
10 and other investments) historically have generated meaningful returns beyond what would be
11 available in standard investments. Admittedly, the higher returns associated with these investments
12 come with reduced liquidity via terms and conditions to which the Debtor agreed prepetition, but
13 liquidating the Debtor's positions now, especially in the Real Estate and Private Funds (each defined
14 and described below), would result in the "distressed, fire sale" of the Debtor's interests, assuming
15 the Debtor could even identify a buyer, resulting in potential losses of principal in excess of
16 \$10,000,000, as well as additional costs, fees, and potential claims for damages.

17 As the Debtor, after careful diligence, investigation, and consultation with its professional
18 investment advisors and Investment Committee, is confident that its investments are either not
19 susceptible to massive loss (including via bank failure) or locked up in investment positions that
20 cannot be exited without millions of dollars in penalties and costs, or that the Debtor is contractually
21 prohibited from exiting its investments in the short term, the Debtor submits that waiver of the
22 requirements of section 345(b) is appropriate under the circumstances of this Bankruptcy Case.

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² Unless otherwise indicated, all section references in this Supplemental Reply shall be to
11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code").

1 II.

2 **SUPPLEMENTAL REPLY TO US TRUSTEE'S OBJECTION**

3 As stated in the Debtor's Reply, the Debtor firmly believes that cause exists to waive strict
4 adherence to the requirements of section 345(b) to permit the Debtor to retain its interest in certain
5 securities, which are invested in (1) that certain BlackRock money market mutual fund called
6 BlackRock BLF FedFund (TFDXX) (the "BlackRock FedFund") via the Debtor's brokerage
7 account with Bank of America (i.e., the BofA Securities Account #9371 or the BofA Investment
8 Account); and (2) multiple other funds via the Debtor's brokerage account at U.S. Bank and which
9 the Debtor refers to as the "U.S. Bank Investment Pool Account" (together with the BofA
10 Securities/Investment Account, the "Investment Accounts"). The Debtor further submits that cause
11 exists to authorize it to continue its prepetition investment practices in the ordinary course as
12 described and detailed in the Motion, the Supplement, the Reply, this Supplemental Reply, and each
13 of the declarations filed in support of the Debtor's pleadings. Since filing the Motion, the Debtor
14 has met and conferred on multiple occasions with counsel for Tracy Hope Davis, United States
15 Trustee for Region 17 (the "UST"), the Official Committee of Unsecured Creditors appointed in
16 this Bankruptcy Case (the "Committee"), and certain of the Cash Management Banks regarding the
17 Debtor's request for relief. The Debtor understands that the Committee takes no position with
18 respect to the Motion and that the UST maintains her position as set forth in the UST Objection. As
19 a result of the Debtor's discussions with the UST and certain of the Cash Management Banks, the
20 Debtor believes that except for the UST's concerns regarding the Investment Accounts, all of the
21 Debtor's other requests for relief under the Motion have been resolved as set forth and addressed in
22 the prior interim orders entered in connection with the Motion.

23 The Debtor understands that chief among the UST's concerns regarding the Debtor's request
24 for waiver of the strict adherence to section 345(b) and continuance of its prepetition investment
25 practices in the ordinary course is the risk attendant with maintaining the Debtor's assets in securities
26 rather than liquidated cash. While the Debtor appreciates the UST's intentions and belief that strict
27 adherence to the UST Guidelines, which would require the Debtor to liquidate all of its various
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1 positions and deposit the cash proceeds in authorized depository institutions, is the only way to
2 protect estate funds. *See* UST Obj. at 9, ¶ 26. The Debtor respectfully disagrees. Strict compliance
3 with section 345(b) will unnecessarily require the Debtor to expend time and resources better
4 focused on developing and negotiating a chapter 11 plan of reorganization to emerge from
5 bankruptcy. More importantly, strict compliance under the circumstances of this Bankruptcy Case
6 will unnecessarily require the Debtor to liquidate valuable assets, likely at substantial loss and cost,
7 a result that would run afoul of one of the very tenets of the Bankruptcy Code – to preserve and
8 maximize assets for the benefit of a debtor’s estate and its creditors. In fact, in certain instances,
9 contractual terms actually prevent the liquidation of certain assets.

10 Further, the UST contends that while the Debtor has addressed some of the factors courts
11 routinely consider when deciding whether cause exists to diverge from the requirements of section
12 345(b), the Debtor has not addressed the following two considerations, and therefore has failed the
13 totality of the circumstances test set forth in *In re Service Merchandise Company, Inc.*:³ (1) its
14 ability to reorganize if one of the financial institutions at which the Investment Accounts are held
15 were to fail, and (2) the tax consequences of closing and liquidating the Investment Accounts and
16 moving the funds to authorized depositories. *See* UST Obj. at ¶¶ 23-24. The Debtor addresses in
17 the remainder of this Supplemental Reply the UST Objection generally and its ability to reorganize
18 in the unlikely event of the failure of one of the financial institutions at which the Investment
19 Accounts are held, but quickly reiterates that, as set forth in the Reply, the Debtor is a tax-exempt
20 organization and therefore would not suffer adverse tax consequences if required to close and
21 liquidate the Investment Accounts and move funds to authorized depositories. That said, if the Court
22 sustains the UST Objection, the Debtor will suffer consequences more dire than adverse tax
23 consequences – as discussed below, the Debtor would lose at least \$36,000 of income on a monthly
24 basis, and also forfeit millions of dollars that are subject to certain agreements and conditions and
25 prohibitions to liquidation.

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28 ³ *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

1 **A. Contrary to the UST Objection, Cause to Waive the Requirements of Section 345(b)**
2 **Requires an Evaluation of the *Totality* of the Circumstances, Not Strict Satisfaction of**
3 **Each Factor of a Commonly Employed Multi-Factor Test**

4 While courts facing with a request to waive the requirement of section 345(b) routinely use
5 the ten-factor test set forth in the *Service Merchandise* case, case law does not require a debtor to
6 satisfy each enumerated factor to obtain the requested relief. Rather, courts are to employ a “totality
7 of the circumstances” standard to determine whether just cause exists to permit an exception from
8 the default requirement. *See, e.g., Serv. Merch.*, 240 B.R. at 896; *In re King Mountain Tobacco Co.,*
9 *Inc.*, 623 B.R. 323, 334 (Bank. E.D. Wash. 2020); and *In re Ditech Holding Corp.*, 605 B.R. 10, 17
(Bankr. S.D.N.Y. 2019).

10 Indeed, Congress recognized that the requirements of section 345(b) may not be appropriate
11 for *every* debtor regardless of size or sophistication:

12 Section 345 of the Code governs investments of the funds of
13 bankruptcy estates. The purpose is to make sure that the funds of a
14 bankrupt that are obligated to creditors **are invested prudently and**
15 **safely with the eventual goal of being able to satisfy all claims**
16 **against the bankrupt estate.** Under current law, all investments are
17 required to be FDIC insured, collateralized or bonded. While this
18 requirement is wise in the case of a smaller debtor with limited funds
19 that cannot afford a risky investment to be lost, it can work to
20 needlessly handcuff larger, more sophisticated debtors. ***This section***
21 ***would amend the Code to allow the courts to approve investments***
22 ***other than those permitted by section 345(b) for just cause,*** thereby
23 overruling *In re Columbia Gas Systems, Inc.*, 1994 WL 463514 [33
24 F.3d 294] (3d Cir. Del. [1994]).

25 *In re King Mountain Tobacco Co., Inc.*, 623 B.R. at 330-31 (citing H.R. Rep. No. 103-835, at 46-47
26 (1994)) (boldfaced, italicized emphasis in original; boldfaced emphasis added).

27 In *Service Merchandise*, the court applied the discretion Congress granted to courts under
28 the Bankruptcy Code and “adopted ... a comprehensive approach ... [and] fleshed out [ten] factors
bearing on what might constitute sufficient cause under section 345(b)...” *Id.* at 332 (citing *Serv.*
Merch. Co., Inc., 240 B.R. at 896). After applying the ten-factor, “non-binding framework...
[which] is not exhaustive and any individual factor or combination of factors will not control,” *see*
King Mountain, 623 B.R. at 332, to the facts at bar in the *Service Merchandise* case, the court found
that cause existed to waive the investment, deposit, and reporting requirements of § 345(b). *Serv.*

1 *Merch. Co., Inc.*, 240 B.R. at 896. In both *Service Merchandise* and *King Mountain*, the courts were
2 swayed by the size and sophistication of the debtor's business operations and complex cash
3 management system, evidenced by the large amounts of money that flowed through the business on
4 a regular basis, as well as the debtors' abilities to manage, maintain, and monitor its operations and
5 cash management system in ways that revealed careful internal controls to mitigate risk. *Id.*; see
6 also *King Mountain*, 623 B.R. at 332.

7 **B. The Court May Consider Factors Not Specifically Enumerated in the Service**
8 **Merchandise Test to Decide If Waiver of Section 345(b) Is Appropriate**

9 To evaluate the "totality of circumstances", the *King Mountain* court went on to consider
10 additional "factors unique to the prosecution of [that] particular bankruptcy case." *Id.* at 333. These
11 "unique" factors included that (1) the *King Mountain* debtor did not file its bankruptcy case to
12 "address operational concerns or to access a broad array of bankruptcy tools, but to use bankruptcy
13 as a vehicle to resolve a longstanding dispute"; (2) the case seemed "unlikely to result in a
14 liquidation or the use of cash on hand as the primary form of plan consideration"; (3) the debtor
15 "appear[ed] to intend to progress quickly through the bankruptcy process"; and (4) "the failure of
16 one or both of the relevant banking institutions is unlikely to be fatal to the debtor's reorganization
17 efforts." *Id.*, at 333-34. The court also considered the "complexity associated with [certain]
18 accounts and the likely involvement of various actors ..." *Id.*, at 334. The court recognized that
19 requiring the *King Mountain* debtor to "dissemble and rebuild its accounts] at other banking
20 institutions would undoubtedly necessitate the involvement of undue resources, necessarily
21 inhibiting reorganization efforts[.]" requiring the debtor to reallocate resources to the detriment of
22 the estate. *Id.* Finally, the court noted that "none of the estate's economic stakeholders ... opposed
23 the debtor's motion or joined the UST's objection." *Id.*

24 **C. Considering the Totality of the Circumstances, the Court Should Waive the**
25 **Requirements of Section 345(b)**

26 As quoted above, in 1994, Congress recognized that while it is wise to require smaller
27 debtors with limited funds to hold only investments that are FDIC insured, collateralized or bonded,
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1 that same requirement “can work to needlessly handcuff larger, more sophisticated debtors” and
2 thus amended section 345(b) “to allow the courts to approve investments other than those permitted
3 by section 345(b) for just cause...” *Serv. Merch.* 240 B.R. at 896 (citing H.R. Rep. 103-834, 103rd
4 Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994). Accordingly, the
5 Bankruptcy Code now gives this Court the authority and power to find that strict adherence to
6 section 345(b) under the facts and circumstances of this Bankruptcy Case would unnecessarily
7 handcuff the Debtor, a large, sophisticated institution advised by a third party professional advisor
8 (Beacon Pointe LLP), its Finance Council and Investment Committee (a subset of the Finance
9 Council). As will be discussed in greater detail below, the facts and circumstances surrounding the
10 commencement of this Bankruptcy Case are analogous to the facts and circumstances in the *King*
11 *Mountain* case. Thus, the Debtor strongly urges the Court to find that as in *King Mountain*, the
12 totality of the circumstances amount to just cause, empowering this Court to waive the requirements
13 of section 345(b) for the benefit of the Debtor’s estate, its creditors, and more than 450,000 local
14 Catholics that the Debtor serves.

15 **1. Liquidating the Investment Accounts and Halting the Debtor’s Prepetition**
16 **Investment Practices Will Be Detrimental to Creditors and the Debtor’s**
17 **Faithful**

18 The Debtor notes that the Investment Accounts are in fact brokerage accounts held at BofA
19 and U.S. Bank. Through these Investment Accounts, the Debtor has invested monies in various
20 funds for the purpose of growing assets that the Debtor has received from various third parties
21 (through the charitable donations of its faithful) in furtherance of the Debtor’s mission.

22 a. **The BlackRock FedFund**

23 The Debtor has invested \$57.6 million (by way of the BofA Investment Account) in that
24 certain BlackRock money market mutual fund called BlackRock BLF FedFund (TFDXX), which
25 also is known as “Blackrock Fed Fund Portfolio Inst Cl” (the BlackRock FedFund). The BlackRock
26 FedFund currently yields returns to the Debtor in the amount of approximately \$251,000 per month,
27 or at a rate of 5.23%. The Investment Committee (a subset of the Finance Council) monitors the
28 BlackRock fund on a regular basis. As there are no liquidity constraints associated with the BofA

1 Investment Account, the Debtor not only has visibility into its interest in the BlackRock FedFund
2 but can liquidate its position in the BlackRock FedFund without restriction.

3 The Debtor, after carefully considering the advice of its professional investment advisors,
4 the Investment Committee, and the Finance Council, determined, prepetition, that it has confidence
5 in the BlackRock FedFund and accordingly invested in that fund. The following is a description of
6 the BlackRock BLF FedFund, as listed on BlackRock's website:

7 FedFund invests **at least 99.5% of its total assets in cash, U.S.**
8 **Treasury bills, notes and other obligations issued or guaranteed**
9 **as to principal and interest by the U.S. Government, its agencies**
10 **or instrumentalities**, and repurchase agreements secured by such
11 obligations or cash. The yield of the Fund is not directly tied to the
12 federal funds rate. The Fund invests in securities maturing in 397
days or less (with certain exceptions) and the portfolio will have a
dollar-weighted average maturity of 60 days or less and a dollar-
weighted average life of 120 days or less. The Fund may invest in
variable and floating rate instruments, and transact in securities on a
when-issued, delayed delivery or forward commitment basis.⁴

13 The Debtor's monies are invested in the BlackRock BLF Fed Fund, which fund is in turn
14 invested in **cash, U.S. Treasury bills, notes and other obligations issued or guaranteed as to**
15 **principal and interest by the U.S. Government, its agencies or its instrumentalities**, as
16 highlighted above. Therefore, the Debtor's interest in the BlackRock BLF FedFund only is at risk
17 if there is a complete meltdown of the entire federal government, including the Department of
18 Treasury, and the Federal Reserve and other federal agencies and instrumentalities, such that the
19 federal financial infrastructure fails. A failure of BofA, a private financial institution, should not
20 result in losses for the Debtor as the BofA Investment Account is merely a brokerage account that
21 facilitates the Debtor's investment position in the BlackRock BLF FedFund.

22 In contrast to the stability of the Debtor's BlackRock FedFund investment, which affords
23 the Debtor a relatively high yield and freedom from liquidity constraints, the Debtor has been
24 advised that if it were to liquidate its position in the BlackRock FedFund and deposit that cash in an
25 authorized depository institution, such account would likely yield only 4.5% returns, with liquidity

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28 ⁴ See <https://www.blackrock.com/cash/en-us/products/282628/blf-fedfund> (last visited October 19,
2023) (emphasis added).

1 constraints. This translates to a loss of approximately \$36,000 per month, and an agreement from
2 the Debtor to forego access to portions of the total deposit for three, six, or 12 months, in tranches,
3 to obtain such 4.5% return. Again, while the Debtor appreciates the UST's concern for the stability
4 and safekeeping of estate funds,⁵ the Debtor believes that the additional .75% of yield, or \$36,000
5 more in monthly interest income is substantial and presents virtually no risk as the Debtor's position
6 in the BlackRock FedFund depends on the strength of the entire federal financial system. If the
7 BlackRock BLF FedFund is at risk, the stability of BofA would be secondary to the more precarious
8 circumstance of our country's entire financial ecosystem on the brink of failure. Moreover, the
9 Debtor has a fiduciary duty to maintain or improve its financial condition for the benefit of not just
10 its creditors, but for the 450,000 Catholics the Debtor serves within the Archdiocese's geographic
11 territory.

12 The Pooled Investment Accounts are brokerage accounts held at U.S. Bank (custodial bank).
13 Like the BofA Investment Account, the Debtor's funds are not "held" at U.S. Bank but invested in
14 various interests and positions in fourteen diversified funds that, in turn, are invested in marketable
15 equities, marketable bonds, mutual funds, real estate, private credit, private equity, and cash. Like
16 the BofA Investment Account (and thus the BlackRock FedFund), the Debtor's Pooled Investment
17 Accounts are subject to Investment Committee oversight and monitoring. Of the fourteen
18 investment accounts within the Pooled Investment Account, the Debtor has the ability to liquidate
19 its positions in six of these funds, which invested in marketable equities, marketable bonds, mutual
20 funds, and cash without restriction, on a daily basis (and in the case of one fund, on a monthly basis).
21 The Debtor holds positions in eight other funds that are subject to various rules and restrictions to
22 which the Debtor agreed, prepetition, in exchange for a higher rate of return on these long-term
23 investments.

24 Specifically, the Debtor holds positions in four funds that are invested in real estate and
25 private equity on a long-term basis (collectively, the "Real Estate Funds"). With respect to these
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27 _____
28 ⁵ As noted in the Motion, the Debtor believes that certain amounts within the Investment Accounts
are not the Debtor's property and therefore are not actually estate funds.

1 Real Estate Funds, the Debtor agreed to invest monies for a minimum period of time and also agreed
2 that it would not liquidate or redeem its position unless certain parameters and requirements (set
3 times, methods of redemption, and other criteria) are met. As a result, the Debtor would only be
4 able to “liquidate” its positions in the Real Estate Funds if it identifies a buyer for its positions in
5 the Real Estate Funds. Based on the advice of the Debtor’s professional investment advisors and
6 the Investment Committee, the Debtor understands that the market for the Debtor’s interest in the
7 Real Estate Funds is neither robust nor organized. Thus, the Debtor would be perceived as a
8 distressed seller, seeking to liquidate its positions in a “fire sale.” Under these circumstances, if the
9 Court requires the Debtor to comply strictly with section 345(b), it would be an understatement to
10 state that the value of the Debtor’s positions in the Real Estate Funds would materially deteriorate
11 as any value the Debtor currently has, or will have in the future, will be destroyed.

12 The Debtor also holds positions in four other funds that are invested real estate, private
13 credit, and private equity (the “Private Funds”), which Private Funds also required the Debtor to
14 agree to invest monies for a minimum period of time and not liquidate or redeem its position unless
15 certain parameters and requirements (set times, methods of redemption, and other criteria) are met,
16 which parameters and requirements are not as restrictive as those related to the Real Estate Funds.
17 Unlike the Real Estate Funds, the Debtor is able to liquidate its positions in the Private Funds on a
18 quarterly or other limited basis.

19 Through the Pooled Investment Accounts, the Debtor invested in the Real Estate and Private
20 Funds, which are not investments in liquid assets but rather long-term investments with the potential
21 for larger returns. To participate in these investments, the Debtor agreed to abide by certain rules
22 and restrictions, and only to redeem its investments upon the satisfaction of certain conditions, as is
23 customary with these types of investments. Based on the investment terms to which the Debtor
24 agreed, prepetition, the Debtor firmly believes that the value of its investments will materially
25 diminish if the Court requires it to adhere strictly to the requirements of section 345(b) and forces
26 the Debtor to liquidate all of its positions in the Real Estate and Private Funds and deposit the
27 proceeds, if any, of such liquidations in authorized depository institutions.

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1 Furthermore, to liquidate the Investment Accounts and cease the Debtor's ordinary course
2 prepetition investment practices, the Debtor may need to reject or breach certain agreements
3 governing the Investment Accounts. As a result, not only will the Debtor likely forfeit future profits,
4 but the Debtor may lose even its initial investment in these private equity funds in addition to
5 incurring penalties, fees, potential rejection damages, and other yet unknown and unliquidated
6 claims on account of such liquidation. The Debtor estimates that of the total \$100,149,786 currently
7 invested through the Pooled Investment Accounts, immediate liquidation could result in losses of
8 more than \$10,000,000 (as the total, aggregated amount invested in the Real Estate and Private
9 Funds). While such loss comprises approximately 10% of the total amount invested through the
10 Pooled Investment Accounts, a loss of more than \$10 million dollars is substantial under any lens,
11 and certainly in the eyes of the 450,000 local Catholics the Debtor serves, the Non-Debtor Catholic
12 Entities (which may assert an interest in at least \$2 million of the total amounts invested in the
13 Pooled Investment Accounts) and, importantly, creditors of the Debtor's estate. Indeed, a loss of
14 this magnitude will impede significantly, and certainly delay, the Debtor's efforts to reorganize.
15 Therefore, the Court must overrule the UST Objection and waive the requirements of section 345(b).
16 Any other outcome with respect to the Investment Accounts will generate the very result against
17 which the Bankruptcy Code, and indeed Congress, is trying to protect – preservation and
18 maximization of the Debtor's assets.

19 **2. Unique Factors Constituting “Cause” to Waive the Requirements of Section**
20 **345(b) Exist Here**

21 The Debtor firmly believes that that cause exists to permit the Court to waive strict adherence
22 to the requirements of section 345(b). In particular, the Debtor notes that several of the factors that
23 the *King Mountain* court considered are present in this Bankruptcy Case. As stated in the Motion,
24 the Debtor is a religious organization with no significant ongoing for-profit business activities. The
25 Debtor's main source of “income” is the Archdiocesan Annual Appeal, fees for services provided
26 to certain Non-Debtor Catholic Entities, revenue from insurance billings, donations, grants, rental
27 income from owned properties, and RCASF ministry revenue. Thus, as the Debtor relies so heavily
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1 on the generosity of the faithful to execute its mission, including by providing critical assistance to
2 those who need and depend on the Debtor, the Debtor is firmly committed to financial transparency
3 and stewardship. To this end, the Debtor takes seriously its financial and fiscal responsibilities,
4 including the responsibility of growing, prudently and conservatively, the funds entrusted to the
5 Debtor and has cautiously developed over many years its investment practices.

6 Like the *King Mountain* debtor, the Debtor did not commence this Bankruptcy Case to
7 address operational concerns or to overhaul and restructure its financial affairs. Rather, the Debtor
8 commenced this Bankruptcy Case because it has neither the financial means nor the practical ability
9 to litigate the multitude of abuse claims on multiple timelines, while still serving the faithful
10 individuals, Parishes, Schools, Cemeteries, and various other Catholic-based social and community
11 service organizations that operate in the Archdiocese. *See* Passarello Decl. at ¶ 8. The Debtor filed
12 for chapter 11 relief to fulfill both its foundational and moral obligations to the survivors, the
13 faithful, and others who have put their trust in the RCASF. *Id.* In this regard, the Debtor intends to
14 engage actively with the Committee and other stakeholders to negotiate a plan of reorganization as
15 early as possible. *Id.* at ¶ 63. These facts align squarely with the first and third unique factors that
16 the *King Mountain* court considered.

17 Further, as stated in the Passarello Declaration, the Debtor cannot afford to remain in
18 chapter 11 for long. *Id.* at ¶ 64. The Debtor relies on the charity of faithful Catholics to sustain its
19 existence. Absent an expeditious as possible resolution of the more than 500 pending lawsuits and
20 this Bankruptcy Case, the Debtor can neither focus on its purpose and mission of supporting its
21 faithful and advancing the mission of the Parishes, Schools and Cemeteries. *Id.* Thus, the Debtor
22 believes it satisfies the second factor considered by the *King Mountain* court in determining to waive
23 the requirements of section 345(b).

24 The Debtor is confident that BlackRock and the various funds in which the Debtor has
25 invested are not at risk of failure. The lay members of the Debtor's Investment Committee and the
26 Finance Council are seasoned finance professionals, and together with the clergy members of the
27 Investment Committee and the Finance Council, they take very seriously the task of investing
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1 wisely, cautiously, and conservatively, the funds entrusted to the Debtor by its faithful.
2 Accordingly, the Debtor believes in the wisdom of the Investment Committee and does not believe
3 that the funds in the Investment Accounts are held at financial institutions at risk of failure. Rather,
4 the funds are diversified, and have yielded substantial returns to the Debtor, both historically and
5 currently.

6 The Debtor also notes that the three additional factors that the *King Mountain* court
7 considered are applicable to this Bankruptcy Case. Disassembly of the Investment Accounts and
8 “rebuilding” them at authorized depositories would involve undue resources, inhibit reorganization,
9 and unnecessarily reallocate the Debtor’s resources, in exchange for smaller returns and greater
10 constraints.

11 Finally, just as in the *King Mountain* court, none of the estate’s economic stakeholders has
12 opposed the debtor’s motion or joined the UST Objection. The Committee has not taken a position
13 as to the Motion, but the Committee has not objected, even after reviewing confidential information
14 requested by the Committee and which the Debtor shared with both the UST and Committee.
15 Accordingly, the Debtor respectfully submits that ample cause exists, under persuasive authority, to
16 waive the requirements of section 345(b) in this Bankruptcy Case.

17 III.

18 **STATUS OF COMPLIANCE WITH U.S. TRUSTEE REQUIREMENTS AS REQUIRED** 19 **UNDER THE INTERIM ORDER**

20 The Debtor also provides by this Supplemental Reply a status report regarding compliance
21 with paragraph 10 of the Interim Order: Each of the Debtor’s Bank Accounts at City National Bank,
22 Bridge Bank, and CB&T have been designated at these institutions as “Debtor in Possession”
23 accounts and the Debtor has provided proof of such designations to the U.S. Trustee.⁶
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26 ⁶ The sole exception is the BofA Securities Account #9371 that is tied to the BofA Investment
27 Account, which, according to BofA, cannot be converted to a “Debtor in Possession” account.
28 The account receives dividends from the associated BofA Investment account on a monthly basis.
Such dividends are automatically swept back into the BofA Investment Account for reinvestment.
Thus, there is little to no risk of loss of any funds in the BofA Securities Account #9371.

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IV.

CONCLUSION

By this Supplemental Reply, the Debtor requests that the Court (1) overrule the UST Objection; (2) authorize the Debtor to maintain the Investment Accounts and continue its prepetition investment practices, including maintenance of the BofA Securities Investment Account #9371 without designating it as a “Debtor in Possession” account as it cannot be so designated; and (3) enter a final order in substantially the form appended to this Supplemental Reply as Exhibit 1, granting, on a final basis, the interim relief this Court previously granted.

Dated: October 20, 2023

FELDERSTEIN FITZGERALD WILLOUGHBY
PASCUZZI & RIOS LLP

By /s/ Paul J. Pascuzzi

PAUL J. PASCUZZI
JASON E. RIOS
THOMAS R. PHINNEY

Attorneys for The Roman Catholic
Archbishop of San Francisco

Dated: October 20, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Ori Katz

ORI KATZ
ALAN H. MARTIN

Attorneys for The Roman Catholic
Archbishop of San Francisco

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Exhibit 1
(Proposed Final Order)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re

THE ROMAN CATHOLIC ARCHBISHOP
OF SAN FRANCISCO,

Debtor and
Debtor in Possession.

Case No. 23-30564

Chapter 11

[PROPOSED] FINAL ORDER
(1) AUTHORIZING CONTINUED USE OF
EXISTING CASH MANAGEMENT SYSTEM,
OPERATIONAL BANK ACCOUNTS AND
RELATED INVESTMENT ACCOUNTS;
(2) AUTHORIZING MAINTENANCE OF
EXISTING BUSINESS FORMS, (3) EXCUSING
COMPLIANCE WITH SECTION 345(b); (4)
AUTHORIZING CONTINUED USE OF
CURRENT INVESTMENT POLICY; AND
(5) SCHEDULING A FINAL HEARING

Date: October 26, 2023
Time: 1:30 p.m.
Via ZoomGov

Judge: Hon. Dennis Montali

The motion of The Roman Catholic Archbishop of San Francisco (“Debtor”), debtor in possession, the *Debtor’s Emergency Motion for Interim and Final Orders (1) Authorizing Continued Use of Existing Cash Management System, Operational Bank Accounts and Related Investment Accounts; (2) Authorizing Maintenance of Existing Business Forms, (3) Excusing Compliance With Section 345(b); (4) Authorizing Continued Use of Current Investment Policy; and Scheduling a Final Hearing*, filed on August 21, 2023, as ECF No. 9 (the “Motion”),¹ as supplemented from time to time, came on for final hearing on October 26, 2023 at 1:30 p.m., before the Honorable Dennis Montali of the United States Bankruptcy Court for the Northern District of California. Paul J. Pascuzzi, Esq., of Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP and

¹ Unless otherwise indicated, capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Motion, Supplement, or the Reply as applicable.

1 Ori Katz of Sheppard, Mullin, Richter & Hampton LLP appeared on behalf of the Debtor. All other
2 appearances were as noted on the record.

3 The Court having considered the Motion, the Supplement, the Passarello Background Decl.,
4 the Gaspari Decl., the Passarello Decl., the Supplemental Passarello Decl., the Reply, the Second
5 Supplemental Declaration, the Supplemental Reply, the Third Supplemental Declaration, all
6 exhibits filed in support of the Motion, the Supplement, the Reply, the Supplemental Reply and their
7 supporting declarations, the *United States Trustee's Omnibus Objection to Debtor's First Day*
8 *Motions and Reservation of Rights* [ECF Nos. 7 & 9] filed on August 23, 2023, as ECF No. 25, and
9 the *Objection of the United States Trustee to Final Approval of Debtor's Motion for Continued Use*
10 *of Existing Cash Management System* filed on September 7, 2023, as ECF No. 71 (collectively, the
11 "UST Objections"), the lack of any other objection to the Motion, and the representations made by
12 counsel at the hearing as reflected in the record of the hearing; and the Court having found that it
13 has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has
14 been given to the Office of the U.S. Trustee, the Cash Management Banks, the twenty largest
15 unsecured creditors, all secured creditors, if any, and any applicable governmental entities; that no
16 further notice is necessary; that the concerns and objections stated in the U.S. Trustee Objection as
17 to this Motion either have been consensually resolved as set forth in the Interim Order and the
18 Second Interim Order or overruled as set forth in this Final Order; that the relief sought in the Motion
19 is in the best interests of the Debtor, its estate, and its creditors; and that good and sufficient cause
20 exists for such relief.

21 It is hereby ORDERED as follows:

- 22 1. The Motion is GRANTED, on a final basis, as set forth herein;
- 23 2. The Debtor is authorized to: (a) designate, maintain, and continue to use any and all
24 existing bank accounts with the same account numbers, including, without limitation, the accounts
25 identified in the Motion; provided however, that the accounts shall be designated as debtor in
26 possession accounts to the extent possible by the relevant banks; and (b) continue to use its existing
27 Cash Management System, which includes use of the Investment Accounts and credit cards. In
28 connection with the ongoing use of the Cash Management System, the Debtor shall continue to

1 maintain strict records with respect to all transfers of cash so that all transactions may be readily
2 ascertained, traced, recorded properly, and distinguished between pre-petition and post-petition
3 transactions, and between the Debtor and any non-Debtor.

4 3. Each of the Debtor's existing depository and disbursement banks, as well as U.S.
5 Bank National Association in its capacity as trustee of the Lay SERP and custodian of the
6 Investment Pool Account (collectively, the "Cash Management Banks"), is authorized to debit the
7 Debtor's accounts in the ordinary course of business without the need for further order of this Court
8 for: (i) all checks drawn on the Debtor's accounts which are cashed at such Bank's counters or
9 exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or
10 other items deposited in one of Debtor's accounts with such Bank prior to the Petition Date which
11 have been dishonored or returned unpaid for any reason, together with any fees and costs in
12 connection therewith, to the same extent the Debtor was responsible for such items prior to the
13 Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any,
14 owed to any Bank for the maintenance of and services related to the Bank Accounts, together with
15 all other fees and obligations relating to the Cash Management System.

16 4. Any of the Debtor's Cash Management Banks may rely on the representations of the
17 Debtor with respect to whether any check or other payment order drawn or issued, or any direction
18 provided pursuant to the applicable deposit, trust or custody agreement, as applicable, by the Debtor
19 prior to the Petition Date should be honored pursuant to this or any other order of this Court without
20 any duty of further inquiry and without liability for following the Debtor's instructions. The Cash
21 Management Banks shall not be deemed in violation of this Order and shall have no liability for
22 relying on such representations by the Debtor or honoring any check or other payment order that is
23 subject to this Order either (a) at the direction of the Debtor to honor such prepetition check or other
24 payment order, (b) in the good faith belief that this Court has authorized such prepetition check or
25 other payment order to be honored, or (c) as a result of an innocent mistake. To the extent that the
26 Debtor directs that any check or other payment order be dishonored or the Cash Management Banks
27 inadvertently dishonor any check or other payment order, the Debtor may issue replacement checks
28 or other payment orders consistent with the orders of this Court.

1 5. That (i) those certain existing deposit, trust, and custody agreements, as applicable,
2 between the Debtor and its Cash Management Banks shall continue to govern the post-petition cash
3 management relationship between the Debtor and the Cash Management Banks, and that all of the
4 provisions of such agreements, including, without limitation, the termination and fee provisions,
5 shall remain in full force and effect, and (ii) the Debtor and the Cash Management Banks may,
6 without further order of this Court, agree to and implement changes to the Cash Management System
7 and procedures in the ordinary course of business, including, without limitation, the opening and
8 closing of bank accounts.

9 6. Nothing contained herein shall prevent the Debtor from opening any additional bank
10 accounts or closing any existing Bank Account(s) as it may deem necessary and appropriate, and
11 the Cash Management Banks are authorized to honor the Debtor's request to open or close, as the
12 case may be, such bank accounts or additional bank accounts, provided however, that any new
13 account shall be with a bank that is insured with the Federal Deposit Insurance Corporation that is
14 organized under the laws of the United States or any State thereof and that such account is either
15 bonded or securitized as described in Bankruptcy Code section 345(b) should the account exceed
16 the FDIC insurance limit, and listed on the U.S. Trustee's list of authorized depositories for the
17 Northern District of California.

18 7. Any and all accounts opened by the Debtor on or after the Petition Date at any Bank
19 shall similarly be subject to the rights and obligations of this Final Order.

20 8. The Debtor and the Cash Management Banks and Wells Fargo Bank (in connection
21 with the continued use of credit cards) are hereby authorized to continue to perform pursuant to the
22 terms of any pre-petition agreements that may exist between them, except to the extent otherwise
23 directed by the terms of this Final Order, and the automatic stay of section 362 of the Bankruptcy
24 Code is hereby modified to the extent necessary to authorize such performance. The parties to such
25 agreements shall continue to enjoy the rights and remedies afforded to them under such agreements,
26 except to the extent modified by the terms of this Final Order or by operation of the provisions of
27 the Bankruptcy Code other than section 362.

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1 9. Except as provided in this Final Order, the Debtor is authorized to continue to use its
2 existing business forms and stationery without alteration or change.

3 10. The Debtor shall use reasonable efforts to comply with the following acts, as
4 requested by the U.S. Trustee in resolution, in part, of the U.S. Trustee Objections:

5 a. Close its Segal Bryant investment account within 15 days of entry of the
6 Interim Order and provide proof of same to the U.S. Trustee within three business days
7 following such closure;

8 b. Close the FRB account (#9117) within 15 days of entry of the Interim Order
9 and provide proof of same to the U.S. Trustee within three business days following such
10 closure; and

11 c. Have each of Bank of America, City National Bank, Bridge Bank, FRB, and
12 CB&T designate the Debtor's respective bank accounts at these institutions as "Debtor in
13 Possession" accounts within 15 days of entry of the Interim Order and provide proof of same
14 to the U.S. Trustee within three business days following such designation.

15 11. The Debtor shall institute systems to regularly "sweep" funds as follows:

16 a. Funds from the FRB brokerage account (#0589) into a debtor in possession
17 account at an authorized depository for the Northern District of California, on a regular basis;

18 b. Any funds in excess of \$250,000 from the Debtor's bank account at Bank of
19 San Francisco into a debtor in possession account at an authorized depository for the
20 Northern District of California, on a daily basis; and

21 c. Funds from the BofA Securities Account (#9371) to the associated BofA
22 Investment Account.

23 12. Except as otherwise set forth in this Final Order, the Debtor is authorized to continue
24 its current investment practices as described in the Motion and related pleadings, including but not
25 limited to the use of the BofA Securities Investment Account, the Investment Pool Checking
26 Account, the Restricted Donations Account, and the Stock Transfer Account. In connection with
27 the foregoing, the Debtor is authorized to maintain the BofA Securities Investment Account #9371
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1 that is tied to the BofA Securities Investment Account without converting or designating such
2 account as a “Debtor in Possession” account.

3 13. Neither this Final Order, nor the Debtor’s payment of any amounts authorized by this
4 Final Order, shall: (i) result in any assumption of any executory contract by the Debtor; (ii) result in
5 a commitment to continue any plan, program, or policy of the Debtor; or (iii) impose any
6 administrative, pre-petition, or post-petition liabilities upon the Debtor.

7 14. In granting the Motion, the Court is not making any findings or determinations as to
8 what is or is not property of the estate. Nothing herein constitutes judicial approval or disapproval,
9 or judicial determination, of what assets are or are not restricted or held in trust or property of the
10 estate or what expenditures are reasonable or appropriate.

11 15. The Debtor is excused from redesignating the Additional Bank Accounts and
12 Supplemental Additional Bank Accounts as debtor in possession accounts and complying with the
13 requirements of section 345(b) as to the Additional Bank Accounts and Supplemental Additional
14 Bank Accounts.

15 16. Notwithstanding the relief granted in this Final Order, all rights of the U.S. Trustee,
16 any statutory committee(s) appointed in this Bankruptcy Case, or any other party in interest,
17 including any right under section 345(b) of the Bankruptcy Code, to object or otherwise challenge
18 the proposed treatment of the BofA Investment Account and the Investment Pool Account invested
19 with fund managers in separate custodial accounts with U.S. Bank, are reserved.

20 17. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to
21 apply to the subject matter of this Final Order, such stay is hereby waived.

22 18. Nothing in this Final Order authorizes the Debtor to make any payments that benefit,
23 directly or indirectly, any credibly accused perpetrator of abuse, whether for wages, support,
24 housing, prepetition claims, retirement or otherwise.

25 19. The Debtors are authorized to take the actions necessary to effectuate the relief
26 granted in this Final Order.

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1 20. The Court shall retain jurisdiction to hear and determine all matters arising from
2 implementation of this Interim Order.

3 APPROVED AS TO FORM:

4 Dated: October __, 2023

TRACY HOPE DAVIS, UNITED STATES TRUSTEE FOR
REGION 17

6
7 By _____

JASON BLUMBERG

8 Trial Attorney for the United States Trustee

9 Dated: October __, 2023

PACHULSKI STANG ZIEHL & JONES LLP

10 By _____

JAMES I. STANG

11 DEBRA I. GRASSGREEN

12 JOHN W. LUCAS

13 Proposed Attorneys for the Official Committee of
Unsecured Creditors

14 *****END OF [PROPOSED] ORDER*****
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Exhibit 2
(Blackline Comparison of
Proposed Second Interim Order Against Entered Interim Order)

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JASON E. RIOS, State Bar No. 190086
THOMAS R. PHINNEY, State Bar No. 159435
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~~Proposed~~ Attorneys for The Roman Catholic
Archbishop of San Francisco

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re

THE ROMAN CATHOLIC ARCHBISHOP
OF SAN FRANCISCO,

Debtor and
Debtor in Possession.

Case No. 23-30564

Chapter 11

~~SECOND-INTERIM~~ PROPOSED FINAL
**ORDER (1) AUTHORIZING CONTINUED USE
OF EXISTING CASH MANAGEMENT
SYSTEM, OPERATIONAL BANK ACCOUNTS
AND RELATED INVESTMENT ACCOUNTS;
(2) AUTHORIZING MAINTENANCE OF
EXISTING BUSINESS FORMS, (3) EXCUSING
COMPLIANCE WITH SECTION 345(b); (4)
AUTHORIZING CONTINUED USE OF
CURRENT INVESTMENT POLICY; AND
(5) SCHEDULING A FINAL HEARING**

Date: ~~September 14~~ October 26, 2023
Time: 1:30 p.m.
Via ZoomGov

Judge: Hon. Dennis Montali

1 The motion of The Roman Catholic Archbishop of San Francisco (“Debtor”), debtor in
2 possession, the *Debtor’s Emergency Motion for Interim and Final Orders (1) Authorizing*
3 *Continued Use of Existing Cash Management System, Operational Bank Accounts and Related*
4 *Investment Accounts; (2) Authorizing Maintenance of Existing Business Forms, (3) Excusing*
5 *Compliance With Section 345(b); (4) Authorizing Continued Use of Current Investment Policy;*
6 *and Scheduling a Final Hearing*, filed on August 21, 2023, as ECF No. 9 (the “Motion”),¹ ~~and the~~
7 ~~*Debtor’s Supplement to the Debtor’s Emergency Motion for Interim and Final Orders*~~
8 ~~*(1) Authorizing Continued Use of Existing Cash Management System, Operational Bank Accounts*~~
9 ~~*and Related Investment Accounts; (2) Authorizing Maintenance of Existing Business Forms,*~~
10 ~~*(3) Excusing Compliance With Section 345(b); (4) Authorizing Continued Use of Current*~~
11 ~~*Investment Policy; and Scheduling a Final Hearing*~~, filed on August 22, 2023, as ECF No. 22 (the
12 “Supplement”) as supplemented from time to time, came on for ~~emergency~~final hearing on ~~August~~
13 ~~24~~October 26, 2023 at 1:30 p.m., ~~and for a second interim hearing on September 14, 2023~~, before
14 the Honorable Dennis Montali of the United States Bankruptcy Court for the Northern District of
15 California, ~~and the Court having entered the Interim (1) Authorizing Continued Use of Existing~~
16 ~~*Cash Management System, Operational Bank Accounts and Related Investment Accounts; (2)*~~
17 ~~*Authorizing Maintenance of Existing Business Forms, (3) Excusing Compliance With Section*~~
18 ~~*345(b); (4) Authorizing Continued Use of Current Investment Policy; and Scheduling a Final*~~
19 ~~*Hearing on August 25, 2023, at ECF No. 41 (“Interim Order”).*~~ Paul J. Pascuzzi, Esq., of
20 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP and Ori Katz of Sheppard, Mullin,
21 Richter & Hampton LLP appeared on behalf of the Debtor. All other appearances were as noted
22 on the record.

23 The Court having considered the Motion, the Supplement, the Passarello Background
24 Decl., the Gaspari Decl., the Passarello Decl., the Supplemental Passarello Decl., ~~and the~~ *Debtor’s*
25 ~~*(1) Reply to Objection of the United States Trustee to Final Approval of Debtor’s Motion for*~~
26

27 ¹ Unless otherwise indicated, capitalized terms not otherwise defined in this Order shall have the
28 same meanings ascribed to them in the Motion, Supplement, or the Reply as applicable.

1 ~~Continued Use of Existing Cash Management System; and (2) Status Report Regarding~~
2 ~~Compliance with Interim Order Regarding Debtor's Existing Cash Management System,~~
3 ~~Operational Bank Accounts and Related Investment Accounts (the "Reply"), and~~ Reply, the Second
4 Supplemental Declaration ~~of Joseph J. Passarello in Support of Debtor's Emergency Motion for~~
5 ~~Interim and Final Orders (1) Authorizing Continued Use of Existing Cash Management System,~~
6 ~~Operational Bank Accounts and Related Investment Accounts; (2) Authorizing Maintenance of~~
7 ~~Existing Business Forms, (3) Excusing Compliance with Section 345(b); (4) Authorizing~~
8 ~~Continued Use of Current Investment Policy; and Scheduling a Final Hearing (the "Second, the~~
9 Supplemental Reply, the Third Supplemental Declaration"), all exhibits filed in support of the
10 Motion ~~and~~, the Supplement, the Reply, the Supplemental Reply and their supporting declarations,
11 the United States Trustee's Omnibus Objection to Debtor's First Day Motions and Reservation of
12 Rights [ECF Nos. 7 & 9] filed on August 23, 2023, as ECF No. 25, and the Objection of the
13 United States Trustee to Final Approval of Debtor's Motion for Continued Use of Existing Cash
14 Management System filed on September 7, 2023, as ECF No. 71 (collectively, the "UST
15 Objections"), the lack of any other objection to the Motion, and the representations made by
16 counsel at the hearing as reflected in the record of the hearing; and the Court having found that it
17 has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has
18 been given to the Office of the U.S. Trustee, the Cash Management Banks, the twenty largest
19 unsecured creditors, all secured creditors, if any, and any applicable governmental entities; that no
20 further notice is necessary; that the concerns and objections stated in the U.S. Trustee Objection as
21 to this Motion either have been consensually resolved ~~with respect to~~ as set forth in the Interim
22 Order and ~~this~~ the Second Interim Order or overruled as set forth in this Final Order; that the relief
23 sought in the Motion is in the best interests of the Debtor, its estate, and its creditors; and that
24 good and sufficient cause exists for such relief.

25 It is hereby ORDERED as follows:

- 26 1. The Motion is GRANTED, on ~~an interim~~ a final basis, as set forth herein;
27
28

1 2. The Debtor is authorized to: (a) designate, maintain, and continue to use any and all
2 existing bank accounts with the same account numbers, including, without limitation, the accounts
3 identified in the Motion; provided however, that the accounts shall be designated as debtor in
4 possession accounts to the extent possible by the relevant banks; and (b) continue to use its
5 existing Cash Management System, which includes use of the Investment Accounts and credit
6 cards. In connection with the ongoing use of the Cash Management System, the Debtor shall
7 continue to maintain strict records with respect to all transfers of cash so that all transactions may
8 be readily ascertained, traced, recorded properly, and distinguished between pre-petition and
9 post-petition transactions, and between the Debtor and any non-Debtor.

10 3. Each of the Debtor's existing depository and disbursement banks, as well as U.S.
11 Bank National Association in its capacity as trustee of the Lay SERP and custodian of the
12 Investment Pool Account (collectively, the "Cash Management Banks"), is authorized to debit the
13 Debtor's accounts in the ordinary course of business without the need for further order of this
14 Court for: (i) all checks drawn on the Debtor's accounts which are cashed at such Bank's counters
15 or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or
16 other items deposited in one of Debtor's accounts with such Bank prior to the Petition Date which
17 have been dishonored or returned unpaid for any reason, together with any fees and costs in
18 connection therewith, to the same extent the Debtor was responsible for such items prior to the
19 Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any,
20 owed to any Bank for the maintenance of and services related to the Bank Accounts, together with
21 all other fees and obligations relating to the Cash Management System.

22 4. Any of the Debtor's Cash Management Banks may rely on the representations of
23 the Debtor with respect to whether any check or other payment order drawn or issued, or any
24 direction provided pursuant to the applicable deposit, trust or custody agreement, as applicable, by
25 the Debtor prior to the Petition Date should be honored pursuant to this or any other order of this
26 Court without any duty of further inquiry and without liability for following the Debtor's
27 instructions. The Cash Management Banks shall not be deemed in violation of this Order and
28

1 shall have no liability for relying on such representations by the Debtor or honoring any check or
2 other payment order that is subject to this Order either (a) at the direction of the Debtor to honor
3 such prepetition check or other payment order, (b) in the good faith belief that this Court has
4 authorized such prepetition check or other payment order to be honored, or (c) as a result of an
5 innocent mistake. To the extent that the Debtor directs that any check or other payment order be
6 dishonored or the Cash Management Banks inadvertently dishonor any check or other payment
7 order, the Debtor may issue replacement checks or other payment orders consistent with the orders
8 of this Court.

9 5. That (i) those certain existing deposit, trust, and custody agreements, as applicable,
10 between the Debtor and its Cash Management Banks shall continue to govern the post-petition
11 cash management relationship between the Debtor and the Cash Management Banks, and that all
12 of the provisions of such agreements, including, without limitation, the termination and fee
13 provisions, shall remain in full force and effect, and (ii) the Debtor and the Cash Management
14 Banks may, without further order of this Court, agree to and implement changes to the Cash
15 Management System and procedures in the ordinary course of business, including, without
16 limitation, the opening and closing of bank accounts.

17 6. Nothing contained herein shall prevent the Debtor from opening any additional
18 bank accounts or closing any existing Bank Account(s) as it may deem necessary and appropriate,
19 and the Cash Management Banks are authorized to honor the Debtor's request to open or close, as
20 the case may be, such bank accounts or additional bank accounts, provided however, that any new
21 account shall be with a bank that is insured with the Federal Deposit Insurance Corporation that is
22 organized under the laws of the United States or any State thereof and that such account is either
23 bonded or securitized as described in ~~11 U.S.C. §~~[Bankruptcy Code section](#) 345(b) should the
24 account exceed the FDIC insurance limit, and listed on the U.S. Trustee's list of authorized
25 depositories for the Northern District of California.

1 7. Any and all accounts opened by the Debtor on or after the Petition Date at any
2 Bank shall, ~~for all purposes under the Interim Order or this Second Interim Order,~~ similarly be
3 subject to the rights and obligations of ~~the Interim Order or this Second Interim~~ Final Order.

4 8. The Debtor and the Cash Management Banks and Wells Fargo Bank (in connection
5 with the continued use of credit cards) are hereby authorized to continue to perform pursuant to
6 the terms of any pre-petition agreements that may exist between them, except to the extent
7 otherwise directed by the terms of ~~the Interim Order or this Second Interim~~ Final Order, and the
8 automatic stay of section 362 of the Bankruptcy Code is hereby modified to the extent necessary to
9 authorize such performance. The parties to such agreements shall continue to enjoy the rights and
10 remedies afforded to them under such agreements, except to the extent modified by the terms of
11 ~~the Interim Order,~~ this ~~Second Interim~~ Final Order or by operation of the provisions of the
12 Bankruptcy Code other than section 362.

13 9. Except as provided in ~~the Interim Order and this Second Interim~~ Final Order, the
14 Debtor is authorized to continue to use its existing business forms and stationery without
15 alteration or change.

16 10. The Debtor shall use reasonable efforts to comply with the following acts, as
17 requested by the U.S. Trustee in resolution, in part, of the U.S. Trustee ~~Objection~~ Objections:

18 a. Close its Segal Bryant investment account within 15 days of entry of the
19 Interim Order and provide proof of same to the U.S. Trustee within three business days
20 following such closure;

21 b. Close the FRB account (#9117) within 15 days of entry of the Interim Order
22 and provide proof of same to the U.S. Trustee within three business days following such
23 closure; and

24 c. Have each of Bank of America, City National Bank, Bridge Bank, FRB, and
25 CB&T designate the Debtor's respective bank accounts at these institutions as "Debtor in
26 Possession" accounts within 15 days of entry of the Interim Order and provide proof of
27 same to the U.S. Trustee within three business days following such designation.
28

11. The Debtor shall institute systems to regularly “sweep” funds as follows:

a. Funds from the FRB brokerage account (#0589) into a debtor in possession account at an authorized depository for the Northern District of California, on a regular basis; ~~and~~

b. Any funds in excess of \$250,000 from the Debtor’s bank account at Bank of San Francisco into a debtor in possession account at an authorized depository for the Northern District of California, on a daily basis; ~~;~~ and

c. Funds from the BofA Securities Account (#9371) to the associated BofA Investment Account.

12. Except as otherwise set forth in this ~~Interim~~Final Order, the Debtor is authorized to continue its current investment practices as described in the Motion and related pleadings, including but not limited to the use of the BofA Securities Investment Account, the Investment Pool Checking Account, the Restricted Donations Account, and the Stock Transfer Account. In connection with the foregoing, the Debtor is authorized to maintain the BofA Securities Investment Account #9371 that is tied to the BofA Securities Investment Account without converting or designating such account as a “Debtor in Possession” account.

13. Neither this ~~Interim~~Final Order, nor the Debtor’s payment of any amounts authorized by this ~~Interim~~Final Order, shall: (i) result in any assumption of any executory contract by the Debtor; (ii) result in a commitment to continue any plan, program, or policy of the Debtor; or (iii) impose any administrative, pre-petition, or post-petition liabilities upon the Debtor.

14. In granting the Motion, the Court is not making any findings or determinations as to what is or is not property of the estate. Nothing herein constitutes judicial approval or disapproval, or judicial determination, of what assets are or are not restricted or held in trust or property of the estate or what expenditures are reasonable or appropriate.

15. The Debtor is excused from redesignating the Additional Bank Accounts and Supplemental Additional Bank Accounts as debtor in possession accounts and complying with the

requirements of section 345(b) as to the Additional Bank Accounts and Supplemental Additional Bank Accounts.

16. Notwithstanding the relief granted in ~~the Interim Order and this Second~~ InterimFinal Order, all rights of the U.S. Trustee, any statutory committee(s) appointed in this Bankruptcy Case, or any other party in interest, including any right under section 345(b) of the Bankruptcy Code, to object or otherwise challenge the proposed treatment of the BofA Investment Account and the Investment Pool Account invested with fund managers in separate custodial accounts with U.S. Bank, are reserved.

17. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this InterimFinal Order, such stay is hereby waived.

18. Nothing in this InterimFinal Order authorizes the Debtor to make any payments that benefit, directly or indirectly, any credibly accused perpetrator of abuse, whether for wages, support, housing, prepetition claims, retirement or otherwise.

19. The Debtors are authorized to take the actions necessary to effectuate the relief granted in this InterimFinal Order.

20. The Court shall retain jurisdiction to hear and determine all matters arising from implementation of this Interim Order.

~~21. The final hearing on the Motion shall be heard on October 5, 2023, at 1:30 p.m. Opposition, if any, to the granting of the Motion on a final basis shall be filed by September 27, 2023. The Debtor's reply to any opposition shall be filed by October 3, 2023, at 12:00 p.m.~~

~~22. Counsel to the Debtor is directed to serve a copy of this Second Interim Order on all parties on the Limited Service List, as defined in the Debtor's Motion For Order Establishing Notice Procedures on file herein, within five (5) days of the entry of this Second Interim Order and to file a certificate of service with the Clerk of the Court.~~

APPROVED AS TO FORM:.

Dated: October __, 2023

TRACY HOPE DAVIS, UNITED STATES TRUSTEE FOR REGION 17

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By
JASON BLUMBERG
Trial Attorney for the United States Trustee

OFFICE OF THE UNITED STATES TRUSTEE

Dated: October __, 2023 PACHULSKI STANG ZIEHL & JONES LLP

By
JAMES I. STANG
DEBRA I. GRASSGREEN
JOHN W. LUCAS
Proposed Attorneys for the Official Committee of
Unsecured Creditors

By: /s/ Jason Blumberg
Jason Blumberg
Trial Attorney for Tracy Hope Davis,
United States Trustee for Region 17

*** END OF [PROPOSED] ORDER ***

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Court Service List

~~Registered ECF Participants only.~~

Summary report: Litera Compare for Word 11.4.0.111 Document comparison done on 10/20/2023 4:37:20 PM	
Style name: SMRH Standard	
Intelligent Table Comparison: Active	
Original DMS: nd://4853-3708-8639/5/RCASF - 2d Interim Order Granting Cash Management Motion.docx	
Modified DMS: nd://4877-8302-2985/1/RCASF - Draft Final Order re Cash Management.docx	
Changes:	
Add	41
Delete	58
Move From	0
Move To	0
Table Insert	2
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	101